IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

WP(C).No. 19566 of 2007(D)

AGAINST THE ORDER DATED 04/01/2007 IN IA.3245/06 IN OS.215/1993 OF I ADDL.SUB COURT,TRIVANDRUM

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PETITIONER:

SARADAMMA, D/O.BHAGAVATHY KUTTY AMMA, AGED 82 YEARS, RESIDING AT BHAGAVATHY VILASAM, PTP JUNCTION, KOWDIAR, TRIVANDRUM, REP. BY HER POWER OF ATTORNEY HOLDER P.A.RAMESH KUMAR S/O.APPUKUTTAN NAIR, AGED 38 YEARS, R/AT BHAVANA, MANNANTHALA FROM BHAGAVATHY VILASOM, PTP JUNCTION, KOWDIAR, TRIVANDRUM.

BY ADV. SRI.G.S.REGHUNATH.

RESPONDENT:

BIJU PURUSHOTHAMAN, 'BINDU', KUMARAPURAM MEDICAL COLLEGE P.O., TRIVANDRUM.

BY ADV. SRI.P.A.AHAMMED, SRI.THOUFEEK AHAMED.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.19566/2007-D:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE POWER OF ATTORNEY DTD. 16/06/2007 EXECUTED BY SARADAMMA IN FAVOUR OF P.A. RAMESH KUMAR.

EXT.P.2: COPY OF THE SALE DEED NO. 3697/1991 DTD. 25/10/1991 DTD. 25/10/1991 OF PATTOM SUB REGISTRY OFFICE.

EXT.P.3: COPY OF THE AMENDED PLAINT IN O.S. NO. 215/93 OF THE SUB COURT, TRIVANDRUM.

EXT.P.4: COPY OF THE DELIVERY LIST AND THE PLAN ATTACHED TO THE DECREE IN O.S. NO. 113/1962 OF THE ADDL. MUNSIFF COURT, TRIVANDRUM.

EXT.P.5: COPY OF THE REPORT AND PLAN OF THE ADVOCATE COMMISSIONER IN O.S. NO. 215/1993 ON THE FILE OF THE IST ADDL. SUB COURT, TRIVANDRUM.

EXT.P.6: COPY OF THE COMMISSION APPLICATION IN O.S. 215/2003 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P.7: COPY OF THE ORDER DTD. 04/01/2007 IN I.A. NO. 3245/2006 IN O.S. NO. 215/1993 ON THE FILE OF THE IST ADDL. SUB COURT, TRIVANDRUM.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

M.N. KRISHNAN, J.

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W.P.C. NO. 19566 OF 2007

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Dated this the 21st day of November, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order in Ext.P7. It is an interim application filed by the defendant in the suit for the issuance of a Commission. The Court below has allowed that application. It is against that decision the plaintiff has come up with this writ petition. A perusal of the order would reveal that already a Commissioner has been appointed in the matter and he has submitted his plan and report. If a person is having objection to the Commissioner's plan and report or he is of the view that it is to be set aside, the procedure to be adopted is to set aside the first Commissioner's plan and report, then apply before the Court for issuance of a Commission. This Court has cautioned on so many occasions that there cannot be issuance of successive Commissions in a very same case because it will result in confusion rather than

resolution. Therefore, the very application filed by the defendants in the case when there is a Commissioner's plan and report on record should not have been entertained by the Court below. Therefore, I set aside the order passed by the Court below and the interim application will stand dismissed but further I make it clear that this will not debar the defendants from filing an application if they think to do so for remitting the Commissioner's plan and report or setting aside the Commissioner's plan and report and the Court after hearing both sides shall dispose of the same in accordance with law, if so filed.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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